

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA	:	Criminal No. 02 Cr. 1385
v.	:	Filed: 10/23/02
JAMES RATTOBALLI,	:	Violations: 15 U.S.C. § 1
Defendant.	:	18 U.S.C. § 371

----- x

INFORMATION

The United States of America, acting through its attorneys, charges:

1. James Rattoballi ("Rattoballi") is hereby made a defendant on the charges stated below.

COUNT ONE -- SHERMAN ACT CONSPIRACY  
(15 U.S.C. § 1)

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Rattoballi, a resident of West Hempstead, New York, sold printing to Grey Global Group, Inc., or its predecessors or affiliates, including Grey Advertising, Inc. (collectively "Grey") through a printing company located in Manhattan, New York of which Rattoballi was a part owner. Rattoballi also worked as a salesperson representing two Manhattan companies that provided prepress services. The printing company and two prepress service companies are hereinafter collectively referred to as "CC-1."

3. Grey, headquartered in Manhattan, New York, provided advertising, marketing, public relations, and media services. Grey was one of the largest advertising agencies in the world, with as many as 12,000 employees and offices in 90 countries. Grey, which had approximately \$8.3

billion in billings in 2000, had a client roster that included major consumer brand companies such as Brown & Williamson Tobacco Corp., The Procter & Gamble Co., GlaxoSmithKline p.l.c., Mars Inc., Hasbro, Inc., Eli Lilly & Co., 3M Co., and Joseph E. Seagram & Sons, Inc.

4. Brown & Williamson Tobacco Corp. (“B&W”) marketed tobacco products. B&W, the third largest cigarette manufacturer and marketer in the United States, was headquartered in Louisville, Kentucky. B&W was a subsidiary of British American Tobacco p.l.c. It had approximately 5,000 employees. B&W’s principal brands were Kool, Lucky Strike, Carlton, Kent, Capri, and Pall Mall.

5. The Color Wheel, Inc., a company located in Manhattan, New York, was a supplier of graphic services, including retouching and separation services, to Grey. The Color Wheel, Inc. was wholly owned by Haluk K. Ergulec. In 1999, The Color Wheel, Inc. merged with two other companies also wholly owned by Haluk K. Ergulec, Manhattan Color Graphics, Inc., and A2, Inc., with The Color Wheel, Inc. being the surviving corporate entity. Manhattan Color Graphics, Inc., A2, Inc., and the pre- and post-merger The Color Wheel, Inc. are hereinafter collectively referred to as “Color Wheel.”

6. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. They included a salesperson representing Color Wheel, Gabriel Casas; a Color Wheel executive; Mitchell Mosallem (“Mosallem”), an executive vice president and director of graphic services at Grey; John F. Steinmetz, a vice president and associate director of graphic services at Grey; John Ghianni, an independent salesperson for a graphic services company; Lori Montgomery, a part-owner of a graphic services company; a Grey employee whose primary responsibility was

overseeing prepress services and printing; and other individuals representing certain graphics services companies.

## II. DEFINITIONS

7. “Retouching” is the process of editing or otherwise manipulating a photograph or digital image to achieve an aesthetically desired result. The process employs a range of image processing tools which can be used to compose, change, and improve any type of image.

8. “Separation” is the act of decomposing an image or photograph into single-color layers, so that it may be printed with a printing press.

9. “Prepress services” are the services and materials necessary to provide magazines and other print media with the images that they manufacture and publish. These services include retouching and separation services.

10. “Printing” is the use of a commercial printing press to produce multiple, printed copies of images inserted in print media or otherwise distributed to potential consumers.

11. “Graphic services” encompasses both prepress services and printing.

## III. BACKGROUND

12. Grey developed advertising and marketing campaigns on behalf of its clients. Some of the advertising that Grey developed appeared in printed form, such as advertisements consisting of pictures and words in magazines. On behalf of its clients, through its graphics services department, Grey contracted with third parties that were suppliers of graphics services (“graphics suppliers”) to provide services and materials related to advertising that appeared in print, including prepress services and printing. Mosallem was responsible for establishing procedures for the selection and supervision of graphics suppliers, including the initial review and authorization of their

bills for payment.

13. Pursuant to agreements with certain of its clients, Grey was paid a fee for its creative work on behalf of the client, and for its supervision of the production of various components of a campaign, including supervision of prepress services and printing. In addition, pursuant to express written agreements with certain of its clients, Grey paid third parties, and was reimbursed by its clients, for “out-of-pocket” costs, including the actual costs of prepress services and printing provided by graphics suppliers. Typically, Grey received no markup or other profit on these “out-of-pocket” costs. Grey’s clients relied on Grey’s representations regarding the accuracy of the bills it presented for reimbursement or the amounts for which it sought reimbursement.

14. The advertising Grey developed and produced for each client often consisted of many separate jobs, with separate, corresponding contracts between Grey and various third party graphics suppliers. In many cases, Grey provided the initiative and exercised its discretion in selecting a graphics supplier and awarding a contract for a particular job or a related group of jobs (a “campaign”) after seeking what purported to be competitive bids from multiple graphics suppliers. Usually, by the time a contract was awarded, Grey and its client had established a budget for the job, in part by referring to the prices quoted by the competing graphics suppliers. Employees of Grey’s graphics services department were responsible for monitoring jobs to determine whether they would be completed within the established budgets and, if not, for seeking the client’s approval to increase the budgets. The actual value of work done in connection with each job ultimately could be lower than, equal to, or higher than the established budget.

15. The graphics suppliers issued invoices to Grey, corresponding to the contracts they had been awarded, when those contracts were completed. Employees of Grey’s graphics services

department were responsible for reviewing the invoices for accuracy and authorizing them for payment. In situations where the graphics supplier's price for the work exceeded the budget for a particular job, the graphics supplier often knew, at the time it was prepared to seek payment, that it would not be paid in full for the work it had done.

16. On approximately July 1, 1994, B&W retained Grey as its agent to provide advertising and marketing services on behalf of its various brands. The agreement between B&W and Grey and all succeeding agreements (hereinafter collectively "the agreement") stated that Grey owed the highest fiduciary duties to B&W, and obliged Grey to exert its best efforts and apply its highest professional skill on B&W's behalf.

17. As part of the agreement, Grey, acting on B&W's behalf, procured various goods and services from third parties. These goods and services included retouching and separation services from graphics supply companies. To ensure that B&W received the best value on purchases made on its behalf by Grey, the agreement between B&W and Grey required that Grey obtain at least three competitive bids before entering into any single contract for goods or services in excess of \$25,000, and at least once a year to obtain competitive bids for any other goods or services purchased on B&W's behalf.

#### IV. TRADE AND COMMERCE

18. From approximately late 1994 until approximately 2001, pursuant to contracts that are the subject of this Count, B&W, through its agency Grey, purchased substantial quantities of retouching and separation services from members of the conspiracy. Materials and equipment were transported across state lines for use in performing some of the aforementioned retouching and separation services.

19. During the period covered by this Count, certain of the co-conspirators performed retouching or separation services on advertisements, including advertisements completed pursuant to contracts that are the subject of this Count, which were thereafter shipped across state lines in a continuous and uninterrupted flow of interstate commerce for inclusion in magazines and other media manufactured and produced outside the State of New York. These magazines and other media were also shipped across state lines in a continuous and uninterrupted flow of interstate commerce from their places of manufacture to customers located throughout the United States.

20. The activities of the defendant and certain of the co-conspirators with respect to the sale of retouching and separation services to B&W, purchased through its agency Grey, including the sale of retouching and separation services pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

#### V. DESCRIPTION OF THE OFFENSE

21. From approximately late 1994 until approximately 2001, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

22. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of retouching and separation services to B&W, contracted through its agency Grey.

23. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired

to do, including, among other things:

(a) Co-conspirators designated in advance that Color Wheel would be the low bidder, among the co-conspirators, on contracts to supply retouching services, and that another graphic services company would be the low bidder on contracts to supply separation services on behalf of B&W brands;

(b) Defendant and co-conspirators discussed and agreed on the prices that would be bid on contracts to supply retouching and on contracts to supply separation services on behalf of B&W brands; and

(c) Defendant and co-conspirators submitted, or caused to be submitted, intentionally high, noncompetitive bids (i.e., “cover” bids) on contracts to supply retouching and separation services on behalf of B&W brands, with the understanding that certain of these graphics supply companies would be allowed to submit bids for, and under certain circumstances allocated contracts to supply, various graphic services in connection with advertising for other Grey clients. The intentionally high bids relating to work Grey procured for B&W were submitted in order to make it appear to B&W that there had been competition for its contracts when, in fact, there had not.

## VI. JURISDICTION AND VENUE

24. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

### COUNT TWO -- CONSPIRACY TO COMMIT MAIL FRAUD (18 U.S.C. § 371)

The United States of America further charges:

25. Paragraph 1 and Paragraphs 2 through 3 and 7 through 15 of Count One of this

Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

## VII. THE RELEVANT PARTIES AND ENTITIES

26. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. They included Mitchell Mosallem (“Mosallem”), an executive vice president and director of graphic services at Grey; Joseph Panaccione, aka Joe Payne (“Panaccione”), a vice president and manager of graphic services at Grey; and other Grey employees.

## VIII. DESCRIPTION OF THE OFFENSE

27. From approximately 1990 until approximately 2001, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, the defendant and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1341 and 1346, in violation of Title 18, United States Code, Section 371.

28. It was a part and an object of the conspiracy that the defendant and others known and unknown, having devised and intending to devise a scheme and artifice to defraud Grey and Grey’s clients, and for obtaining money and property from Grey and Grey’s clients by means of false and fraudulent pretenses, representations, and promises, and to deprive Grey and Grey’s clients of their intangible right of honest services of certain of Grey’s employees, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered



by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Sections 1341 and 1346.

IX. THE MANNER AND MEANS BY WHICH THE  
CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

29. Beginning in approximately 1990, Rattoballi agreed with certain co-conspirators to defraud certain Grey clients by causing CC-1 to issue false and fraudulent invoices relating to its contracts to produce graphic services and materials for advertising. Typically, the invoices were false and fraudulent in that the quantities -- and thus the prices -- of certain line items listed in the invoices were inflated to allow CC-1 and Rattoballi to recoup the cost of goods and services that had been provided for the personal benefit of senior employees and executives of Grey, and members of their families. These goods and services included the printing of graphics items such as wedding invitations, holiday cards, brochures, and family and other personal photographs.

30. A Grey executive instructed Panaccione to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs. Rattoballi then discussed the amounts of expenses incurred by himself and CC-1 and then discussed with Panaccione on to which jobs those monies should be added and, in many cases, exactly where and how on the false and fraudulent invoices those charges should appear. On occasion, Panaccione consulted with other employees in Grey's graphics services department in

order to identify the jobs to which monies could be added, normally in situations where the job was expected to run under budget or where the job had not yet been budgeted but CC-1 could be given an opportunity to increase its bid or price quotation.

31. In addition to the conduct identified in Paragraphs 29 and 30, during all or some of the period from approximately 1990 until approximately 2001, Rattoballi paid Mosallem kickbacks in the form of goods or services such as clothing, limousine service, airline tickets, and meals at restaurants. Rattoballi made arrangements with various suppliers of those goods and services so that Mosallem and his family could charge personal goods and services to CC-1's account and have the subsequent invoices paid by CC-1. The kickbacks were unknown to Grey and Grey's clients, who expected that Grey's employees would act in accordance with Grey's fiduciary obligation when awarding contracts to vendors. In exchange for the kickbacks, Mosallem ensured that CC-1 was placed on Grey's limited list of approved vendors, which Mosallem had created, and further ensured that CC-1 would receive a portion of the total value of contracts for prepress services and printing awarded by Grey. In general, by paying the kickbacks, Rattoballi was able to maintain CC-1's prices at noncompetitive levels because he did not have to set CC-1's prices in response to open and honest competition from other vendors. In addition, on several occasions Rattoballi added a portion of the value of the kickbacks to the invoices that he discussed with Panaccione. As a result, Grey and its clients paid higher prices for prepress services and printing than they would have if Mosallem had aggressively and honestly solicited competitive prices from other vendors.

32. Between approximately 1990 until approximately 2001, Rattoballi and co-conspirators caused CC-1 to issue to Grey numerous false and fraudulent invoices.

33. Co-conspirators further caused Grey to pay the false and fraudulent invoices and then

to seek reimbursement from its clients.

34. Certain of the checks issued by Grey to CC-1 in payment of the false and fraudulent invoices were sent via the United States mail.

35. Certain of Grey's invoices to its clients requesting reimbursement for Grey's payment of fraudulently inflated invoices issued by CC-1 and corresponding checks issued by Grey's clients in payment of the Grey invoices, were sent via the United States mail or by private or commercial interstate carrier.

#### X. OVERT ACTS

36. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions between approximately 1990 until approximately 2001, pursuant to the charged conspiracy, Rattoballi and his co-conspirators caused CC-1 to issue fraudulently inflated invoices to Grey, and Grey to issue checks in payment of these invoices to CC-1. Some of these invoices and checks were sent through the United States mails; and

(b) On numerous occasions between approximately 1990 until approximately 2001, co-conspirators caused Grey to issue invoices to its clients requesting reimbursement for those fraudulently inflated invoices received from CC-1 and, in turn, Grey's clients sent checks in

payment of those invoices to Grey. Some of those invoices and checks were sent through the United States mails.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

Dated: 10/23/02

/s/ \_\_\_\_\_  
CHARLES A. JAMES  
Assistant Attorney General

/s/ \_\_\_\_\_  
RALPH T. GIORDANO  
Chief, New York Office

/s/ \_\_\_\_\_  
JAMES M. GRIFFIN  
Deputy Assistant Attorney General

/s/ \_\_\_\_\_  
REBECCA MEIKLEJOHN

/s/ \_\_\_\_\_  
SCOTT D. HAMMOND  
Director of Criminal Enforcement

/s/ \_\_\_\_\_  
DOUGLAS M. TWEEN

Antitrust Division  
U.S. Department of Justice

/s/ \_\_\_\_\_  
ELIZABETH B. PREWITT

/s/ \_\_\_\_\_  
JAMES B. COMEY  
United States Attorney  
Southern District of New York

Attorneys, Antitrust Division  
U.S. Department of Justice  
26 Federal Plaza, Room 3630  
New York, New York 10278  
(212) 264-0654